

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO  
*State of Nevada v. Abbott Labs., Inc., et al.*,  
Case No. CV02-00260 (Nevada I) and  
*State of Montana v. Abbott Labs., Inc., et al.*,  
CA No. 02-CV-12084-PBS<sup>1</sup>

Judge Patti B. Saris

**DEFENDANTS BAXTER INTERNATIONAL INC. AND BAXTER HEALTHCARE  
CORPORATION'S MOTION FOR RECONSIDERATION OF ORDER DENYING  
JOINT MOTION TO AMEND CMO 15**

Defendants Baxter International Inc. and Baxter Healthcare Corporation (hereinafter "Baxter") request that this Court reconsider the order denying Plaintiffs' and Defendants' joint motion to amend CMO 15.

On January 25, 2006, the Court denied Plaintiffs' and Defendants' joint motion to amend CMO 15.<sup>2</sup> Defendants in the Montana and Nevada actions have moved to amend CMO 15 ("Defendants' Motion") and suggested a March 31, 2006

<sup>1</sup> Baxter is not a defendant in *State of Nevada v. American Home Products, et al.*, CA No. 02-CV-12086-PBS (Nevada II).

<sup>2</sup> Case Management Order ("CMO") No. 15 sets forth the following deadlines associated with discovery:

Fact discovery cutoff: January 31, 2006  
Plaintiffs' expert reports on liability issues: March 3, 2006  
Defendants' expert reports on liability issues: April 3, 2006  
Motions for summary judgment: April 3, 2006  
Oppositions: May 3, 2006  
Replies: May 17, 2006  
Sur-replies: May 31, 2006  
Hearing on motions for summary judgment: June 15, 2006

discovery cut-off. Baxter does not believe that it can meet the March 31, 2006 discovery cut-off without running the risk of seeking subsequent additional extensions from the Court. Accordingly, this motion seeks the entry of an order granting the relief requested in the original joint motion to amend CMO 15 based upon Baxter's unique position with regard to discovery.

Baxter shared a draft of this motion with Plaintiffs on January 31, but as of the time of filing, Baxter has not yet heard back from Plaintiffs as to whether they are willing to join this motion.

**I. BAXTER REQUESTS AN EXTENSION OF THE DEADLINE FOR FACT DISCOVERY AND THE SHIFT OF OTHER DEADLINES ACCORDINGLY WITH RESPECT TO BAXTER.**

Baxter has concluded that it is not possible to complete the remaining discovery by January 31, the present discovery cut-off. Baxter also does not believe that it can meet the March 31, 2006 discovery cut-off proposed in Defendants' Motion.

Baxter has already produced sales transaction data and thousands of pages of other documents to Plaintiffs' counsel. Baxter currently has over 25 attorneys working on collection, review, and production of documents. Baxter has identified a huge number of employees (out of nearly 40,000 employees world-wide) who may have potentially responsive documents. Baxter has conducted hundreds of interviews to identify and collect documents from employees who work in Baxter offices located throughout the country and from their home offices. Baxter has contracted with an electronic discovery vendor which, in cooperation with Baxter, is in the process of

completing the collection of potentially responsive information, including the collection of computer hard drives, e-mails, and network documents. This review involves at least eight electronic records systems and outmoded predecessor/legacy computer systems. In the past several weeks alone, for example, Baxter and its vendor have successfully collected approximately 165 hard drives. Baxter is presently adding additional personnel and resources to its discovery efforts in order to complete discovery as soon as possible. Simply put, Baxter does not in good faith believe that a March 31 cut-off date will be sufficient.

Accordingly, Baxter proposes that the Court adopt the schedule initially proposed by the parties and Baxter will continue its efforts to produce documents on a rolling basis:

- Fact discovery cutoff date: June 1, 2006;
- Plaintiffs to file any expert reports on liability issues: July 20, 2006;
- Baxter to file any expert reports on liability issues: September 7, 2006;
- With respect to any motions for summary judgment, briefing will proceed according to the following schedule:

Motions for Summary Judgment September 21, 2006

Oppositions to Motions October 19, 2006

Replies November 2, 2006

Sur-replies November 16, 2006

Hearing

November 30, 2006

Baxter believes that this schedule provides sufficient time to conduct discovery given the number of documents which Baxter believes it has to produce with respect to the drugs at issue and given the breadth of discovery required by Baxter to prepare the case for trial.

## **II. CONCLUSION**

This litigation requires Baxter to protect and collect an unprecedented amount of documents and information. At bottom, this motion amounts to an exercise of utmost candor by Baxter. Despite intense efforts by Baxter to comply with the present fact discovery cut-off, Baxter realizes in good faith that it is better to inform the Court *now* of its difficulties than to be silent and then file the predictable, and undesirable, motion to enlarge time.

For all of the foregoing reasons, Defendant Baxter respectfully requests that this Court enter an order: (i) granting the joint motion for reconsideration; and (ii) granting the original joint motion to amend CMO 15.

DATED: January 31, 2006

*On Behalf of Baxter International Inc. and  
Baxter Healthcare Corporation*

By: /s/ Merle M. DeLancey

CERTIFICATE OF SERVICE

I, hereby certify that I, Merle M. DeLancey, counsel to Baxter International Inc. and Baxter Healthcare Corporation, caused a true and correct copy of the foregoing Baxter International Inc. and Baxter Healthcare Corporation's Motion for Reconsideration of Order Denying Joint Motion to Amend CMO 15 and Order to be served electronically on counsel of record pursuant to Paragraph 11 of the Case Management Order No. 2, by sending a copy to LexisNexis File and Service for posting and notification to all parties on January 31, 2006.

/s/ Merle M. DeLancey  
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